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THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON, D. C. 20301

14 JAN 1977

Lt. Gen. Brent Scowcroft  
Assistant to the President  
for National Security Affairs  
The White House  
Washington, D.C. 20506

Dear General Scowcroft:

This is in reference to the Attorney General's letter of January 7, 1977 to you recommending revision of National Security Council Memorandum 335, (NSDM 335), and to his proposal that the President sign an order approving interim procedures which he enclosed.

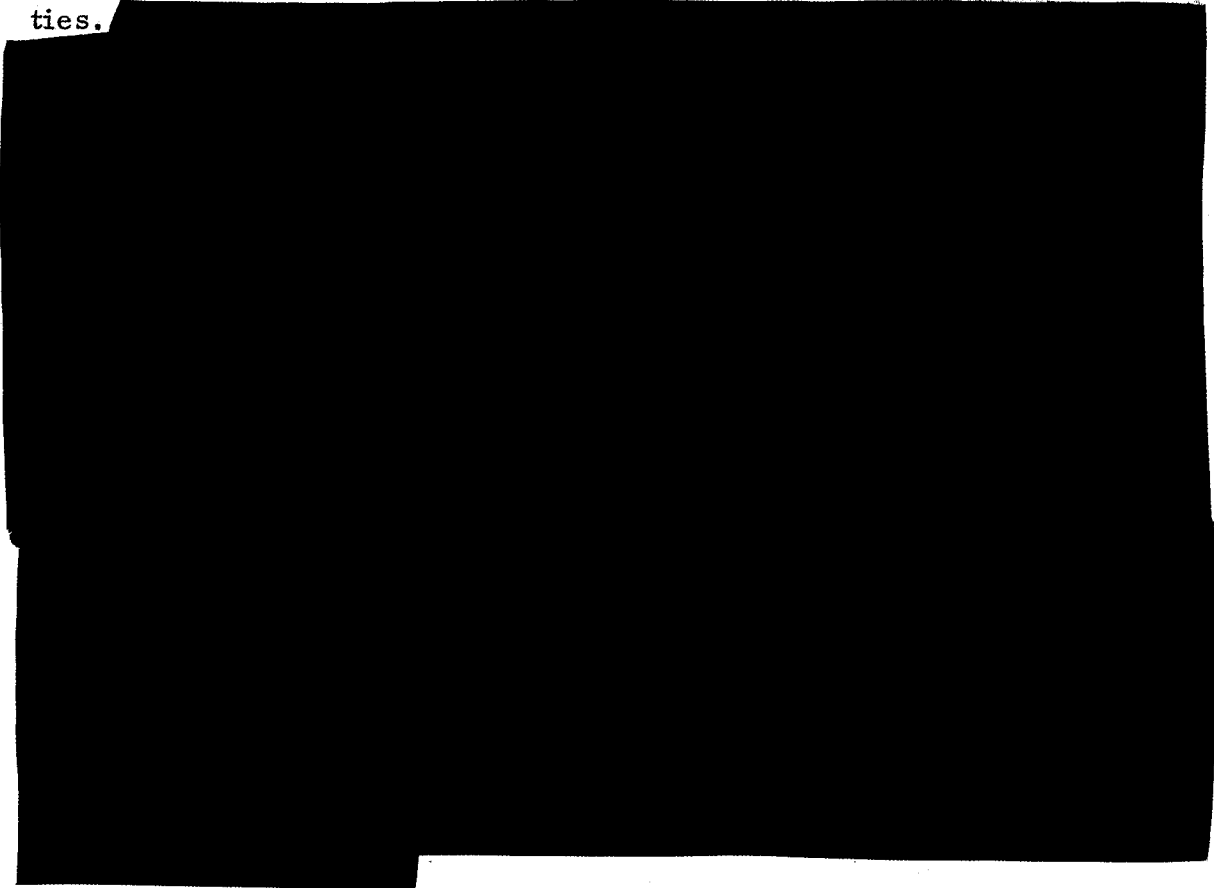
The proposal that the President personally sign an order expressly approving the operations of the Special Operation Field Office (SOFO) is a matter which is for the Attorney General and your office to consider. However, I recommend that the Attorney General withdraw his letter of January 7, 1977 until such time as agreement is reached on the interim procedures. The procedures proposed in the January 7 letter do not conform to our understanding of the state of the law, and if adopted would seriously erode the capability of SOFO to meet its foreign intelligence and counterintelligence requirements.

The statement in the January 7 letter to the effect that NSDM 335 is an excessively broad authorization, and that "no activity under NSDM 335 should be conducted until the President signs an order expressly approving the operation" causes me considerable concern. This tends to place a legal cloud on on-going SOFO operations which I do not believe is warranted. These operations have been recently reapproved by the President, and it is my belief had the personal approval of the Attorney General last August. I am unaware of any legal developments since that time which now make illegal what was considered legal last August. Consequently, if SOFO operations are not to be suspended immediately, the Attorney General's letter should not remain before the President.

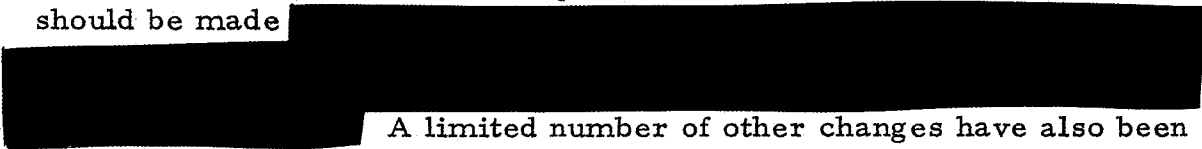
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From an operational standpoint, adoption of the proposed procedures would lead to a drastic reduction in SOFO's foreign intelligence activities.



Although less critical to SOFO operations, a corresponding change should be made



A limited number of other changes have also been proposed to me, but which are not sufficiently substantive to require elaboration at this time.

The final area of concern relates to the scope of the Attorney General's authority to regulate foreign intelligence activities. The proposed interim procedures are identified as flowing from the authority conferred on him by Executive Order 11905. However, that Order gives him regulatory authority only under specifically defined conditions. For example, regulations governing electronic surveillance operations are

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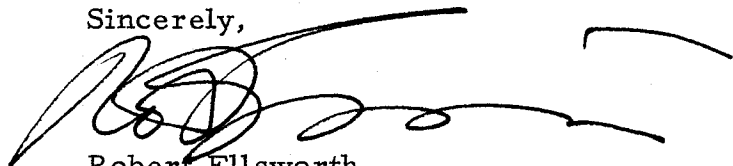
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subject to his approval if (1) the person targeted, wherever located, is a United States person or (2) the sender or receiver of the communication is in the United States. The Order does not provide that intelligence operations conducted solely outside the United States (in this instance the U.S. Military Occupation Zone in Berlin), and against non-United States persons, are subject to his regulatory powers. Similarly, the Order provides that the interception of mail in "United States postal channels" is prohibited except in accordance with laws and regulations. But it most certainly does not purport to regulate foreign postal systems when the mail concerned does not involve United States persons. For reasons that are not clear, the interim procedures impose restrictions on intelligence and counterintelligence operations against persons who are not entitled to Fourth Amendment protection, and who are not within the contemplation of the Executive Order.

In light of the sensitivity of these issues, and the need for an early resolution of them by this Administration, I recommend that you consult with the Attorney General and other members of the Intelligence Community at the earliest possible date.

Sincerely,

A handwritten signature in dark ink, appearing to be 'R. Ellsworth', written over a horizontal line.

Robert Ellsworth

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